

1 Stephen M. Doniger (SBN 179314)
stephen@donigerlawfirm.com
2 Scott A. Burroughs (SBN 235718)
scott@donigerlawfirm.com
3 Trevor W. Barrett (SBN 287174)
tbarrett@donigerlawfirm.com
4 Justin M. Gomes (SBN 301793)
jgomes@donigerlawfirm.com
5 DONIGER / BURROUGHS
6 603 Rose Avenue
7 Venice, California 90291
8 Telephone: (310) 590-1820
9 Attorneys for Plaintiff

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 WONGAB CORPORATION,
13
14 Plaintiff,

15
16 v.

17
18 TARGET CORPORATION; et al.,
19
20 Defendants.

Case No. 2:18-cv-02625-JAK-AS
Hon. John A. Kronstadt Presiding

**WONGAB CORPORATION'S
RESPONSIVE CLAIM
CONSTRUCTION BRIEF**

Hearing Date: November 19, 2018
Time: 10:30 a.m.
Courtroom: 10B - 1st Street

III. Wongab's Constructions are Proper

A. Plain and Ordinary Meaning of "two-row" in Claims 5, 6, and 7 is sufficient and aligns with the remaining claims and specification

The phrase "two-row" should be construed with its obvious plain and ordinary meaning which aligns with the remaining patent claims and is sufficiently defined. "A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so." *Agilent Techs., Inc. v. Affymetrix, Inc.*, 567 F.3d 1366, 1378 (Fed. Cir. 2009), citing *Merck & Co. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005). As used in these claims, "two-row" could only reasonably mean "having two rows." This definition is supported by the specification because the phrase "two rows" is recited in the specification in Col. 6, lines 46, 49-50, and 53-54 (see also FIGs 12-14) concerning the same subject matter as Claims 5, 6, and 7. Even if the use of "two-row" in these claims is duplicative in light of the language in Claim 1, "two-row" is still sufficiently defined in context given that there is no ambiguity as to what it means in Claims 5, 6, and 7. Because one of ordinary skill in the art would interpret this phrase as suggested, it is appropriate for construction. *Honeywell Int'l, Inc., v. ITC*, 341 F.3d 1332, 1338 (Fed. Cir. 2003); *Novo Indus., L.P. v. Micro Molds Corp.*, 350 F.3d 1348, 1353, 1358 (Fed. Cir. 2003). Wongab's proposed construction for "two-row" is proper.

B. Claim 6 is enforceable despite the obvious correctable error

The disputed text in Claim 6, "unit the organizations of another unit design," was plainly intended to state, "the unit organizations of another unit design." This is an obvious and correctable error. *CBT Flint Partners, LLC v. Return Path, Inc.*, 654 F.3d 1353, 1358 (Fed. Cir. 2011). With that simple, obvious correction, this language is only subject to one reasonable interpretation. The parties agreed on definitions for "unit organizations" and "unit designs," so the only reasonable reading of this phrase combines those terms with the plain meaning of the remaining terms "of" and

1 “another,” i.e. “the unit organizations within a different unit design.” *Phillips* 415
 2 F.3d at 1312. This clear meaning is further supported by the specification. Col. 6,
 3 lines 39-41 and FIG. 12. This phrase is properly construed using plain meanings in
 4 conjunction with the agreed-on constructions. Reviewing Claim 5 and FIGs 12 and
 5 13, make this meaning even more apparent. Claim 5 concerns unit designs that are
 6 staggered or zig-zag (FIG. 13), whereas Claim 6 concerns unit designs that are
 7 parallel or straight across (FIG. 12). The intended language is unambiguous. Claim 6
 8 is enforceable despite its obvious correctable error.

9 C. Claims 7 and 8 are sufficiently defined

10 There is no ambiguity in the disputed language in Claims 7 and 8. “[T]he
 11 length of [A] is longer than that of [B]” and “the width of [C] is wider than that of
 12 [D]. Any person with ordinary skill in the art would interpret these statements to
 13 concern B’s length and D’s width. *Honeywell Int’l, Inc.* 341 F.3d at 1338; *Novo*
 14 *Indus., L.P.*, 350 F.3d at 1353, 1358. This is not merely a possible interpretation of
 15 these phrases, it is the only cognizable meaning, otherwise Target would likely have
 16 identified any alternative interpretation. Because any person with skill in the art, and
 17 any layperson, would interpret these phrases as Wongab proposes, these claims are
 18 sufficiently defined and enforceable.

19 D. Claim 1 is supported and defined

20 It is “presum[ed] that the same terms appearing in different portions of the
 21 claims should be given the same meaning unless it is clear from the specification and
 22 prosecution history that the terms have different meanings at different portions of the
 23 claims.” *Paragon Solutions, L.L.C. v. Timex Corp.*, 566 F.3d 1075, 1087 (Fed. Cir.
 24 2009), quoting *PODS, Inc. v. Porta Stor, Inc.*, 484 F.3d 1359, 1366 (Fed. Cir. 2007)).
 25 “[A] network structure” in line 11 of Claim 1 should be given the same meaning as “a
 26 network structure” in line 15 of the claim. There is no support in the specification or
 27 the prosecution history of the ‘476 Patent to determine that these phrases must refer
 28

1 to two distinct “network structures.” The use of “a network structure” in both
2 instances indicates that the claim language is not limited to loops from any particular
3 network structure. These portions of the claim (lines 11 and 15-16) are concerned
4 with the particular loop shapes of the network structure – “a specific loop shape” and
5 “a different loop shape” – not the network structure itself. Where the claims in the
6 ‘476 Patent refer to distinct or specific iterations of the key terms, those claims
7 explicitly identify the terms as such. For example: “a specific loop shape,” “a
8 different loop shape,” “a specific chain number group,” “one unit design,” “another
9 unit design,” “one unit organization,” “another unit organization.” Col. 8 lines 7, 12,
10 17-18, 25-27, 30-32, 35-36, and 39-41. The two uses of “a network structure” in
11 Claim 1 need not refer to two different structures.

12 Assuming for the sake of argument that the second usage of “a network
13 structure” refers to a different network structure from the first, this claim is still
14 sufficient to proceed. Target presumes that only one network structure is
15 contemplated by the specification, but especially in light of the agreed definition for
16 that phrase – “the configuration of unit organizations with one another” – different
17 portions of the same warp knitting fabric could be described as different network
18 structures and the entire fabric could still be subject to several of the ‘476 Patent’s
19 claims. Lastly, “a claim is not limited to the embodiments described in the
20 specification unless the patentee has demonstrated a clear intention to limit the
21 claim’s scope with words or expressions of manifest exclusion or restriction,” so
22 even if a warp knitting fabric with more than one network structure is not a specific
23 embodiment cited in the specification, Claim 1 would still be viable even if it is
24 deemed to concern two network structures. *i4i Ltd. P’ship v. Microsoft Corp.*, 598
25 F.3d 831, 843 (Fed. Cir. 2010) (citation and internal quotations omitted). Claim 1 can
26 properly be construed and enforced.

1 **IV. Conclusion**

2 In light of the above, Wongab requests that the Court adopt Wongab's
3 constructions for the disputed terms.

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By: /s/ Scott A. Burroughs
Scott A. Burroughs, Esq.
Trevor W. Barrett, Esq.
DONIGER /BURROUGHS
Attorneys for Plaintiff